

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

KENNETH "BUTCH" WARNER
Plaintiff,

v.

CIVIL ACTION NO. 5:13-cv-22204

TOWN OF PINEVILLE
Defendant.

NOTICE OF REMOVAL

NOW COMES the Defendant, Town of Pineville, West Virginia, a domestic municipal corporation by and through its counsel, Johnnie E. Brown, Jill M. Harlan and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, pursuant to 28 U.S.C. §§1331, 1391, 1441 and 1446, and said Defendant hereby gives notice that, on the grounds set forth below, it is removing the above styled action from the Circuit Court of Wyoming County, West Virginia to the United States District Court for the Southern District of West Virginia. In support thereof, this Defendant states and avers as follows:

1. This civil action was commenced by the Plaintiff Kenneth "Butch" Warner (hereinafter referred to as "Plaintiff"), against the Defendant on or about May 24, 2013, by the filing of a Complaint in the Circuit Court of Wyoming County, West Virginia, designated Civil Action No. 13-C-79. (*See* Summons and Complaint attached hereto as "Exhibit 1").

2. Plaintiff formally served the Defendant with this Complaint on or about July 25, 2013.

3. In his Complaint, Plaintiff asserts claims that arise under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, and the Civil Rights Act of 1991, 42 USC § 1981. The Plaintiff further alleges violations of the 5th and 14th Amendments to the United States Constitution.

Specifically, Plaintiff has asserted that Town of Pineville took adverse employment actions against him, including discharge from employment based on his race. These claims form the basis of this Notice of Removal.

4. This Notice of Removal is being filed within thirty (30) days after the receipt by the Defendant of the Complaint filed by the Plaintiff that raises claims removable to the United States District Court for the Southern District of West Virginia.

5. This Court has “original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Plaintiff has alleged in his Complaint that the actions of the Defendant have denied him certain rights afforded under Title VII, 42 USC §1981, as well as the 5th and 14th Amendments to the United States Constitution. (*See* “Exhibit 1”).

6. 28 U.S.C. § 1441(b) states that “any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties[...].”

7. Based upon 28 U.S.C. § 1441(b), Plaintiff has asserted claims invoking the protections afforded under the laws of the United States.

8. Pursuant to 28 U.S.C. § 1391, venue is proper in the Southern District of West Virginia because events or omissions giving rise to the claims contained in the Complaint are alleged to have occurred in this district.

9. In accordance with 28 U.S.C. § 1446(a), the Defendant states that the Summons and the Complaint constitute all the process, pleadings and orders served upon them affecting removal.

(See "Exhibit 1"). A certified copy of the Docket Sheet for Civil Action No. 13-C-79 in the Circuit Court of Wyoming County, West Virginia, is attached hereto as "Exhibit 2."

10. A true and correct copy of this "Notice of Removal" will be filed promptly with the Circuit Clerk of Wyoming County, West Virginia, and written notice thereof given to counsel for plaintiff in accordance with 28 U.S.C. § 1446(b). The "Notice of Filing of Notice of Removal" is attached hereto as "Exhibit 3."

11. The removal of the above-captioned civil action from the Circuit Court of Wyoming to the United States District Court of the Southern District of West Virginia is proper.

WHEREFORE, the Defendant prays that the service and the filing in this Honorable Court of this Notice of Removal, and also the service upon the Plaintiff and the filing in the Circuit Court of Wyoming County, West Virginia, a notice to Plaintiffs and the Circuit Court of the filing of this Notice of Removal (which includes an attached copy of this Notice of Removal) shall effect the removal of this action from the Circuit Court of Wyoming County, West Virginia, to the United States District Court for the Southern District of West Virginia.

TOWN OF PINEVILLE, A DOMESTIC
MUNICIPAL CORPORATION,
By Counsel,

/s/ Johnnie E. Brown
Johnnie E. Brown, WV State Bar No. 4620
Jill M. Harlan, WV State Bar No. 6000

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TOWN OF PINEVILLE
Defendant.

CERTIFICATE OF SERVICE

The undersigned, counsel of record for Defendants, does hereby certify on this 22nd day of August, 2013, that a true copy of the foregoing "*Notice of Removal*" was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

Timothy P. Lupardus
P.O. Box 1680
Pineville, W.V. 24874
Counsel for Plaintiff

s/s Johnnie E. Brown
Johnnie E. Brown, WV State Bar No. 4620
Jill M. Harlan, WV State Bar No. 6000

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